Consultation Response

FCA CP 26/13 on Cryptoasset Perimeter Guidance

June 2026

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **FCA's consultation paper 26/13 on Cryptoasset Perimeter Guidance**. The Association for Financial Markets in Europe (AFME) is the voice of the leading banks in Europe's financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent over 150 leading global and European banks and other significant market players. Our members play a vital role in Europe's financial ecosystem, underwriting around 90% of European corporate and sovereign debt, and 85% of European listed equity capital issuances. Importantly, AFME members are market makers, providing liquidity, which is essential for ensuring financial markets can function efficiently. We also represent law firms and other associate members which advise market participants and support AFME's legal and regulatory initiatives.

We refer the FCA to our joint letter with UK Finance (dated 28 May 2026), addressed to HMT and the FCA, in relation to certain targeted issues concerning the perimeter of the UK Cryptoasset Regime. Below we reiterate the key points in response to the specific questions posed by CP26.13, in particular on the definition of cryptoassets and the new regulated activity of safeguarding and arranging safeguarding of qualifying cryptoassets and relevant specified investment cryptoassets.

We would like to thank Linklaters LLP for providing legal analysis on this topic.

Executive Summary

We remain concerned about the UK's decision to deviate from most major international jurisdictions' decision to ensure a technologically neutral definition of DLT-based financial instruments, in particular by creating a separate legal definition. This, coupled with a lack of clarity on the safeguarding treatment of such instruments, places UK firms at a disadvantage in DLT markets and undermine market confidence in the use of new technologies and development of tokenisation structures.

To mitigate impact on market functioning, we therefore support necessary clarifications to the Draft Crypto PERG (and the related draft Cryptoasset SI – as highlighted in our separate letter) to ensure that:

1. Cryptoassets that are merely record or evidence interest in specified assets will not be considered as qualifying cryptoassets (QCs), specified investment cryptoassets (SICs), or relevant specified investment cryptoasset (RSICs).
2. Existing authorised custodians can safeguard RSICs under their existing permission, without seeking a variation of permission.
3. Firms that provide services in respect of specified investments that are characterised as RSICs, but do not hold the means of access, will fall out of scope of the new safeguarding activity.

Questions

Question 2: Do you agree with our proposed guidance set out in the New specified investments section? If not, please explain why.

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We reiterate our understanding that cryptoassets that are merely record or evidence interests in specified investments, and which are not themselves distinct assets capable of being transferred by way of a change of control, will not be QCs or RSICs (see Section 2).

To align with this interpretation, we therefore support to clarify – at a minimum – certain overly generalised wording in the Draft Crypto PERG (see Schedule 1). In addition, given the existence (and ongoing evolution of different tokenisation models and structures), we remain concerned that the requirements under Draft Crypto PERG would entail high legal burden and fees in the analysis of structuring considerations (even where a cryptoasset is economically equivalent to a specified investment, e.g. DIGIT v. a traditional gilt), and inadvertently limit innovation. This would undermine UK market participants' ability to issue DLT-based assets and also access to overseas DLT-based capital markets.

Question 3: Do you agree with our proposed guidance set out in the New regulated cryptoasset activities section? If not, please explain why.

We acknowledge the policy rationale behind creating a new regulated activity for safeguarding RSICs, as also set out in our letter dated 28 May, but view that this decision continues to give rise to regulatory uncertainty in the way of traditional and regulated financial institutions engaging with the new activity, even where the assets in question have the same economic qualities as their traditional formats (see Section 3).

Given the FCA's commitment to assess applicants authorised under RAO Art. 40 in respect of the new safeguarding activity against the existing CASS 6 regime, we view there is no longer any clear policy rationale for requiring firms that are already authorised to safeguard and administer specified investments to seek a variation of permission in order to be authorised to safeguard RSICs. We therefore support the grandfathering of permission for Art. 40 firms for undertaking this new activity (i.e. persons authorised under article 40 of the RAO are automatically deemed to be authorised to conduct activities under article 9N with regard to RSICs), rather than mandating a variation of permission for such firms.

In addition, to limit any negative impact on intermediated custody chains, were a third party custodian to perform safeguarding type activities in relation to specified investments that are evidenced and transferred by way of an update to a register or record involving cryptoassets, we understand that such custodian would be treated as safeguarding and administering the *underlying specified investment*, and not as safeguarding any QC or RSIC (assuming the safeguarding and administration activity is otherwise being conducted). In this context, we support additional clarifications in the Draft Crypto PERG such that a firm carrying our custody services in respect of specified investments that are characterised as RSICs but does not hold the means of access or appoint another entity to do so (e.g. where RSICs are immobilised with a CSD or other top-tier entity that is not appointed by the custodian), that firm would fall outside of the new regulated activity for safeguarding RSICs. This is because the firm would not have control of the 'cryptoasset' in a way to bring about a transfer of its benefit. In addition, where a firm is holding QCs in a principal capacity in connection with its own registrar or record-keeping functionalities concerning specified investments (and not on behalf of investors or other participants), that firm should not be considered to be safeguarding those QCs on behalf of investors in respect of those underlying specified investments.